SUPREME COURT, U. S.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No 75-147

Supreme Court, U. S.
FILED
JUL 26 1975
MICHAEL RODAK, JR., CLERK

STANLEY V. TUCKER,
Petitioner

-v-

JEAN NEAL, et al.
Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

STANLEY V. TUCKER
Box 35
Hartford, Conn 06101

SUBJECT INDEX

	Page
Table of Authorities	ii
Prior Action By This Court	1
Citation To Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional & Statutory Provisions	3
Statement of Factual Background	3
SUBSTANTIAL REASONS FOR GRANTING WRIT	
I. THE DECISION BELOW IS IN CONFLICT WITH OTHER CIRCUITS AND OTHER DISTRICTS	5
A. OTHER CIRCUITS	6
B. OTHER DISTRICTS	9
II. THE DECISION DENYS FUNDAMENTAL DUE PROCESS RIGHTS UPHELD IN DECISIONS OF U S SUP. CT.	13
III. CONN NEWLY ADOPTED, UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT PROHIBITS THE LIENS AS "PHONEY"	16
CONCLUSION	17
Decision 2nd C. A.	A1
Ruling on Cross Motions For Summary Judgment	A 2

TABLE OF AUTHORITIES

Page

FEDERAL STATUTES/RULES/CASES

28 USC 1454(1)..... 2

28 USC 1963 14,16,17

FRCP Rule 4. 2,3,6,7,8

FRCP Rule 5 9

FRCP Rule 7..... 9

FRCP Rule 4 d..... 5

FRCP Rule 64.....2,3,7,8

FRCP Rule 8..... 9

FRCP Rule 69 2,3,8

STATE STATUTES

Conn G. S. 49-44.....2, 3, 14

Conn G. S. 52-604 to 606..... 5, 16
(P. A. 73-498)

Calif Civil Code Procedure 170.6 6

" " " " 410.10 6

" " " " 415.40 6

FEDERAL CASES — Page

Chemical Bank NY v Pug 10
51 FRD 147

Griffin v Griffin 13,14, 15, 17
327 US 220

Henderson 66 v Harvison 12
58 FRD 408

Metanuska Valley v Moliter 15
365 F 2d 358

Nelson v Swing A Way 9
266 F 2d 184

Rumsey v Failing 8
333 F 2d 960

Sapphia v Lauo Lines 9
130 F Supp 810

Stanford v Utley 15
341 F 2d 265

Veek v Commodity Ent 6,7
487 F 2d 423

White v Secretary HEW 12
56 FRD 499

USA For Use of Tanos v St Paul 7
361 F 2d 838

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petioner prays that a writ of certiorari issue to review the juugment of the United States Circuit Court of Appeals for the Second Circuit entered April 30th, 1975.

PRIOR ACTION BY THIS COURT

This cace has not been before this Honorable Court before.

CITATION TO OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Second Circuit is print ed in the Appendix hereto, infra A1 ,

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JURISDICTION

The jurisdiction of this court is invoked under 28 USC 1254 (1)

QUESTIONS PRESENTED

1. Is the California federal judgment void due to service not complying with mandatory statutory requirement for service by federal marshall, FRCP Rule 4c?
2. Are the multitudious liens recorded by respondents maliciously and with bad faith void for failure to comply with statutory requirments for recording by federal marshall? Rule 64 & 69 FRCP.
3. Did the district Court err in applying res judicata to issues not litigated in California?
4. Are the multitudious liens prohibited by Connecticut's newly enacted P.A. 73-498 prohibiting "phoney judgments"?
5. Are the California judgments upon which respondents base their liens "phoney judgments?"
6. Did the District Court err in granting summary judgment where mingled issues of fact and law were disputed?
7. Did the District Court err in denying motion to amend complaint to challenge constitutionality of Conn G. S. 49-44
8. Is notice and hearing required on "registering" a federal judgment since it creates a new judgment with new rights remedies, and limitations in forum state.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This action involves the validity of federal judgments rendered in violation of statutory requirments, failure to make service by federal marshall, Rule 4c FRCP.

This action involves the validity of 14 liens recorded in Connecticut in violation of Connecticut's newly enacted Phoney judgement act and in violation of statutory requirments for service by federal marshall FRCP Rule 64 & 69.

This action involved an amendment to the complaint denied by the court to challenge on due process and equal protection grounds the constitutionality of Conn G. S. 49-44.

A consistent series of decisions by the court of appeals have held as void as without jurisdiction judgments rendered in actions without Rule 4c compliance and the decision below is contrary to established law.

STATEMENT OF FACTUAL BACKGROUND

The factual background leading to this action is that Petitioner is a resident of Connecticut since 1961 and Jean Neal is the sister of former wife of Petitioner both residing in California. Divorce proceedings started in California in 1959 and vindicative and malicious acts took place persistently over years including concealment of Petitioner's children in other counties or cities in California when Petitioner exercised his vacation and/ or visitation rights.

Approximately 40 litigations of all types both civil and criminal were brought against this Petitioner in the California state courts over the decade from about 1959 to about 1969 by Respondent, her relatives and/ or her attorneys. All of thise actions were dismissed except two or three like this action were Calif state court judgments were rendered under conditions of denial of due process and thus with out jurisdiction.

Petitioner's sole activity randomely conducted in California was to exercise his first amendment right to travel across state lines to visit his minor children domiciled in California and to vindicate their rights in court.

The claims of Jean Neal come from a Judgment made in the Superior Court in Ventura on April 23, 1959. Petitioner claims the state judgment as invalid due to denials of due process and trial judge disqualified for prejudice under statute California Civil Code of Procedure S 170.6.

Jean Naal filed in the federal courts of San Francisco a div ersity complaint on the California state judgment rather than in the federal courts of Connecticut as she should have. Service of summons and cmmplaint was made under the California long arm statute (CCP 410.10) under the provision for service by air mail requiring return receipt (CCP 415.40). At this point Petitioner contends Respondent committed a FATAL ERROR in that service was made by a person specified in CCP 414.10 (a person over 18 yrs and not party to action) whereas the federal rule FRCP 4c mandates that service must be by federal marshall.

Petitioner contends the complaint served in the San Francisco federal court lacked a

jurisdictional basis and was fraudulent in that an ex parte two page jurisdictional basis was filed with the court but never served. Petitioner received this document two years later in mails from 9th C. A.

THUS THE DEFECTIVE SERVICE VIOLATING RULE 4c WAS UNKNOWN TO PETITIONER AND NOT LITIGATED IN THE CALIFORNIA PROCEEDINGS.

Subsequently without notice or hearing to Petitioner Respondent "registered" her California federal judgment in the federal courts of Connecticut and without notice or hearing proceeded to record about 14 liens thus immobilizing all of Petitioners assets during most crucial years of intense inflation in interest rates.

The lack of notice in recording liens and the nature of judgments rendered without due process caused the judgments and liens to fall under the "phoney judgment" prohibition of Connecticut's newly enacted P.A. 73-498, "Uniform Recognition of Foreign Judgments Act"

SUBSTANTIAL REASONS FOR GRANTING WRIT

I. THE DECISION BELOW IS IN CONFLICT WITH OTHER CIRCUITS AND OTHER DISTRICTS

The many factual circumstances under which different actions were litigated involving Rule 4c and application of 4 d(7) have resulted in a fairly consitent flow of decisions that Service by the federal marshall is mandatory unless a court order is obtained for service by an indifferent person. Repeatedly other districts and other circuits rejected for lack of jurisdiction service not made by the federal marshall or without court order.

FRCP RULE 4 c: "SERVICE of all process shall be made by a U. S. Marshall or some person specially appointed by the court for that purpose"

I.A.OTHER CIRCUITS

The recent 9th C. A. case of Veek v Commodity Enterprises, 487 F 2d 423, Nov 6th, 1973 unequivocably settled this question under a factual background remarkably analagous to this action.

VEEK P 425:

> [1, 2] The district court was persuaded that the mandatory language of Rule 4(c) could be circumvented by Veeck's syllogistic argument. We disagree. When personal service of original process is made pursuant to Rule 4(c), it must be made by a person specified by Rule 4(c). See 2 J.Moore, Federal Practice, ¶ 4.08, at 1009-1011 (2d ed. 1970); 4 Barron & Holtzoff, Federal Practice and Procedure, § 1092, at 353 (Wright ed. 1969); cf. United States for Use of Tanos v. St. Paul Mercury Ins. Co., 361 F.2d 838, 842-843 (C.A. 5, 1966) (dissenting opinion). Accordingly, since Howes was not a person specified by Rule 4(c), he lacked proper authority to serve the district court's summons upon the appellants.

It is undisputed that Jean Neal's attorney, Robert R. Anderson, acting on his own "self-help" without any court order made service of summons and complaint by mail

Veek P 426:

> [4] The district court's lack of in personam jurisdiction over the appellants renders void its default judgment against them. Pennoyer v. Neff, 95 U. S. 714, 726-728, 24 L.Ed. 565 (1877). Accordingly, the district court should have granted their motion to set aside that void judgment. Ruddies v. Auburn Spark Plug Co., 261 F.Supp. 648, 657 (S.D.N.Y., 1966); Fed.R.Civ.P. 55(c) and 60(b)(4).

The 5th C.A. ruled consistent with the 9th C.A. decision in Veek, supra. See USA for the Use of Tanos v St Paul Mercury Ins Co. 361 F 2d 838 1966.

Page 838: "Writ of garnishment should have been served by the U.S. marshall and not by Forida county sheriff"

FRCP Rules 4c, 64

Page 839: "The federal rules of civil procedure have statutory effect and Rule 64 provides that "any existing statute of the United States governs to the extent to which it is applicable."

Under this later case the 14 liens recorded by Respondent , Robert R. Anderson, are void as well as the federal court judgment rendered in San Francisco federal court.

The district court in this action and the 2nd C. A. ruled contrary to the 9th C.A. and the 5th C. A. and thus ample grounds exist for this Court to grant the writ of certiorari.

The 10th C. A. consistent with the 5th and 9th decisions makes service by the U. S. Marshall mandatory or the proceeding is void. Rumsey v Failing 333 F 2d 960 1964.

P 962: "We are of the opinion in supplemental proceedings FRCP with respect to the method of service and to the person who may make service control rather than general provisions of state's practice and procedure."

Rumsey P 961: "FRCP have force and effect of statute. FRCP Rule 69a"

While the Courts of Appeal are consistent in their requirement for compliance with the statutory rules the Respondents have repeatedly violated the rules both in their void judgment obtained in California and in the many illegal liens recorded in the State of Connecticut.

1. FRCP RULE 4 c: Requires service by U. S. Marshall in serving summons. Respondents used "self-help" and made own service.

2. FRCP Rule 4 c : Requires recording of judgment liens by U. S. marshall. Again Respondents use "self-help" and filed 14 illegal liens causing great damages to this Petitioner.

3. FRCP Rule 64: Respondents violated Rule 64 in filing their 14 liens.

4. FRCP Rule 69: Requires writ of execution unless court orders other wise. Respondents used "self help"

5. FRCP Rule 7 : Requires application for orders to be in writing and part of the notice of hearing. Yet in the California federal court Respondents applied "ex parte" and never served their jurisdictional statement.

6. FRCP Rule 8 : No jurisdictional statement was served by the Respondents with their California federal complaint.

7. FRCP Rule 5: Requires service of every order and application. The application containing the jurisdictional statement was never served as required by the rules.

The issues raised in the Connecticut federal court as to the avalidity of the California federal judgment by reason of violations of numerous statutory rules was not litigated and is properly litigated on collateral attack on the validity of the judgment at this time.

Nelson v Swing A Way Mfg 266 F 2d 184 8th C.A. 1959

> "The court must look to the pleadings and determine the questions essential to the former decision"

I. B. THE DECISION CONFLICTS WITH OTHER DISTRICTS

An early case that clearly and unequivocably resolves the identical question briefed herein comes from 1955 N.D. N. Y. Sapphia v Lauro Lines 130 F Supp 810

Sapphia P 810:

Federal Civil Procedure ⇐505

In action for injuries sustained while aboard ship on high seas, service of process attempted to be made on operator of ship by delivering copy of summons and complaint to operator's agent for sale of passage tickets for the ship, would be vacated on his motion therefor where plaintiff failed to prove that ticket agent was in fact authorized by appointment or by law to receive service of process, and where there was no showing or even contention that plaintiff's counsel, who attempted service under New York practice, was specially appointed to make that service, as required by Federal Rules. Fed.Rules Civ.Proc. rule 4(c),

Plaintiff's attempted service under New York Civil Practice Act, § 229-b was also abortive despite F.R.Civ.P. 4(d)(7), 28 U.S.C.A. Only "a United States marshal * * * his deputy, or * * some person specially appointed by the court for that purpose" may serv process.[2]

In 1970 the Nevada District Court went even further to refuse a litigant who had "registered" a federal judgment (just as respondents "registered" in Connecticut an order permitting a County Sheriff to serve a lien upon grounds the numerous statutory protections afforded by the marshall plus statutory application of the rules made service by marshall mandatory.

Chemical Bank NY Trust Co v Pug S & G Co
51 FRD 147

Federal Civil Procedure ⇐586, 606, 2697

Judgment creditor who had registered judgment with clerk of district court was not entitled under rule relating to persons entitled to serve all process to designation of a person other than United States marshal to make service and levies of writs of execution, attachment and garnishment, and term "all process" as used in rule was not intended to encompass writs authorizing or requiring property to be seized and taken into custodia legis. Fed.Rules of Civ.Proc. rule 4(c), 28 U.S.C.A.

..... While process which functions only as notice to a litigant or third party, the obligations of the process server being completed when service is made, may appropriately be accomplished by any qualified person under court authorization, this is not so with respect to process which invokes other duties and responsibilities subject to court supervision and governed by federal statutes. The statutory requirements for bonding a United States Marshal and his deputies (28 U.S.C. § 564), and statutory requirements regarding collection and accounting for fees (28 U.S.C. § 572), the charges for levying upon and keeping seized properties (28 U.S.C. § 1921), and the obligations with respect to judicial sales (28 U.S.C. § 2001, et seq.), for examples, are inapplicable to a person whose sole official connection with court administration is a designation under Rule 4(c) as a person qualified and authorized to make service.

In 1972 the ND NY reviewed the same issue with the same results where "atempted service" outside the rules was made just as in this action respondents made an"atempted service"outside the rules.

White v Secretary of Health, Education &Welfare
56 F R D Aug 9, 1972

Page 499:

> Federal Rule of Civil Procedure 3 provides that a civil action is commenced by filing a complaint with the court; Rule 4(a) further provides that upon the filing of the complaint the clerk shall issue a summons and deliver it for service to the Marshal or to a person specially appointed to serve it and Rule 4(c) provides that service of all process shall be made by a United States Marshal, by his deputy or by some person specially appointed by the court for that purpose. There was, therefore, no authority allowing plaintiff to attempt service as he describes. --

The latest case reported is from the District of Texas where a default judgment was set aside in favor of a trial on the merits.

Henderson 66 Sales Inc v Harvison
58 FRD 408 1973.

Page 412:

> [4 6] While "a party should not be permitted to flout [the rules] with impunity,"[4] and a default judgment should only be set aside upon a showing that there "was good reason for the default,"[5] it is clear that any doubts should be resolved in favor of a trial on the merits.[6] This Court is not of the opinion that evidence adduced at an ex parte hearing which forms the foundation for a default judgment, even though of a probative nature and introduced in good faith, should preclude later scrutiny

II. THE DECISION BELOW ACTS TO DENY FUNDAMENTAL DUE PROCESS UPHELD IN DECISIONS OF THE UNITED STATES SUPREME CT

A leading Supreme Court case in which the right of a debtor to notice and hearings (and to present orderly defenses) was upheld where liens were recorded on out of state judgments was Griffin v Griffin 327 U. S. 220 Feb 25th, 1946.

The Griffin supra case involved the validity of a foreign (NY) judgment as to full faith and credit where execution was commenced within the District of Columbia. The District Court upheld the lien(as in this action). The Court of Appeal upheld the District Court (just as in this action). The UNITED STATES SUPREME COURT granted certiorari and reversed holding that due process was offended where Mr Griffin had his assets seized or executed on by reason of an out of state judgment when he contended he had valid defenses including that the foreign state judgment was invalid due to denial of due process.

Griffin P 228:

> Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment *in personam* against him. *McDonald* v. *Mabee*, 243 U. S. 90; cf. *Webster* v. *Reid*, 11 How. 437, 459.

Griffin Page 228:

> It is plain in any case that a judgment *in personam* directing execution to issue against petitioner, and thus purporting to cut off all available defenses, could not be rendered on any theory of the State's power over him, without some form of notice by personal or substituted service. *Wuchter* v. *Pizzutti*, 276 U. S. 13, 18-20; Restatement of Conflict of Laws, § 75; and compare *Milliken* v. *Meyer*, 311 U. S. 457. Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller* v. *Holly*, 176 U. S. 398, 409.

The Griffin, supra, case is remarkably factually similar to this action where the 14 liens were recorded in Connecticut without notice or hearing on a out of state judgment that Petitioner claims is invalid due to denial of due process.

District Judge Clarie was wrong in not permitting amendment of the complaint to challenge on constitutional grounds Connecticut G. S. 49-44 permitting the recording of judgment liens.

Perhaps the fault is with the registration statute 28 USC 1963 in permitting the creating of brand new judgments in the forum state without notice or hearing. Judge Clarie used the argument that a hearing is not essential in that one was granted presumably in the rendering state.

This argument is specious since in the forum state by "registration" creates a brand new judgment with new rights,

new duties and new time limitations. See

Metanuska Valley Lines v Moliter 9th CA 1966
365 F 2d 358

Stanford v Utley 8th CA
341 F 2d 265

Both Metanuska and Stanford, supra, are consistent that the "registration" of a foreign federal judgment creates a brand new federal judgment in the state of rendition.

IF THIS IS UNQUESTIONABLY SO THEN NOTICE AND HEARING ARE MANDATORY TO SCREEN OUT "PHONEY JUDGMENTS" NOT ENTITLED TO FULL FAITH AND CREDIT.

In light of above cases it appears this instant action is factually appropriate for petitioning for a three-judge federal court to hear the constitutional challenge to 28 USC 1963 in light of Griffin, Metanuska and Stanford supra.

AN ENLIGHTENED REVIEW BY THIS HONORABLE SUPREME COURT WILL BE OF GREAT BENEFIT TO THE CIRCUIT COURTS OF APPEAL AND TO THE DISTRICT COURTS AND ELIMINATE NEED FOR A THREE-JUDGE DISTRICT COURT.

III. CONNECTICUT'S NEWLY ADOPTED, UNIFORM RECOGNITION OF FOREIGN JUDGMENTS ACT PROHIBITS THE LIENS AS "PHONEY"

Effective October 1, 1973 Connecticut adopted the "Uniform Enforcement of Foreign Judgments Act" G. S. 52-604 thro 609. is a model act adopted by many states.

Of great significance is that this model act requires notice to the alleged debtor:

G.S. 52-605 c "within 30 days after filing of the judgment.... creditor shall mail notice ... to the debtor"

In addition there is a right to pre sent defenses.

G. S. 52-606:b "If the debtor shows the court any ground upon which enforcement shall be stayed.... the court shall stay enforcement"

A comparison of the "Uniform Enforcement of Foreign Judgments Act" with Griffin supra shows this act meets the constitutional test and provides protection to debtors.

A comparison of 28 USC 1963 with Griffin supra shows 28 USC 1963 DOES NOT MEET THE CONSTITUTIONAL STANDARDS.

In light of the above startling comparison it is most important that certiorari be granted and these issues be reviewed for guidance and illumination for all the courts.

CONCLUSION

This Court is asked to consider the conflict in the decisions between the courts below and other courts briefed in light of the constitutional standard set forth in Griffin supra and to summarilly reverse.

In the alternate the serious constitutional faults in 28 USC 1963 as exposed by the "phoney judgments" litigated herein are grounds for noting probable jurisdiction to review on their merits the nationwide issues for the benefit of all the courts.

Respectfully Submitted:

STANLEY V. TUCKER

UNITED STATES COURT OF APPEALS
FOR THE SECOND DISTRICT

STANLEY V. TUCKER

Plaintiff- Appellant

A

-v-

JEAN NEAL ET AL

Defendant- Appellees

74-1921

Before HAYS, GURFEIN, and GRAAFEILAND
Circuit Judges

Appeal for the USDC -Connecticut

ON CONSIDERATION WHEREOF, it is now ordered, adjusged, and decreed that the judgment of said District Court be and hereby is affirmed on the opinion of Honorable T. Emmet Clarie, Chief Judge.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTIBU

STANLEY V. TUCKER

-v-

JEAN NEAL,et al

No H-8

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff, Stanley V. Tucker, commeneed this pro "civil rights action", seeking monetary damages, a declaratory judgment, and injunctive relief against the individual defendants, who are citizens of the State of California, and the California based law partnership of Anderson & Anderson. The thrust of the complaint is the plaintiff's contention that the defendants conspired to cause, and did in fact cause, to be recorded upon the land records in various towns in which the plaintiff owns property, 14 judgment liens which the plaintiff variously describes as "false", "fraudulent", and "pretended." The defendants have counter-claimed, seeking a foreclosure of as many liens as may be required to satisfy their judgment, together with costs. The parties have filed cross-motions for summary judgment pursuant to Rule 56, FRCP. The Court having considered the numerous memoranda, affidavits, and papers filed in connection with the present action, finds that the plaintiff Tucker' motion for summary judgment should be denied, and that the defendant's motion for summary judgment should be granted.

I

A brief statementof the factual background of this case is essential to an understanding of the posture of the parties respective claims. The defendant, Robert R. Anderson, is a Calif attorney and a member of the law firm of Anderson & Anderson. Attorney Anderson's affidavit represents that he first met the plaintiff in California in 1966 furing his representation of the plaintiff's former wife after her divorce from the plaintiff. The affidavit further states that subsequent to that time Attorney Anderson saw the plaintiff Tucker on numerous occasions, usually in connection with pro se litigation commenced by him "in Calif courts for Los Aageles to San Jose".

The affidavi.. of Attorney Anderson states, the plaintiff does not dispute that one of the plaintiff's numerous pro se actions in the State of California was a $215,000 damage suit filed in the Santa Barbara Superior Court against Jean Neal, a defendant in the present action. According to the Anderson affidavit, that suit ultimately dismissed, but "when Mr Tucker sued Mrs Neal again, this time in Santa Clara County for $292,000" he advised her to bring a legal action for malicious prosecution. Following her counsel's advice Mrs Neal filed suit against the plaintiff Tucker in Ventura Superior Court No 50686. The affidavit further represents, and the plaintiff does not dispute that a $341,000 counter claim was filed by him, and that her personally and without counsel perticipated in all stages of this litigation, including a jury trial which was held during the latter part of April 1969. That trial resulted in a jury verdict in favor of Mrs Neal in the amount of $20,723.61. Judgment was accordingly entered upon that verdict and it thereafter became finalized.

In July of 1971 Jean Neal brought an action on her state court judgment in the USDC-ND of California CA 71-1447-AJZ. The purpose of this action was to establish a judgment registrable pursuant to 28 USC 1963 and hence enforceable against the plaintifff Tucker's assets in the State of Connecticut. The Anderson affidavit represents that the plaintiff was served by registered mail in that action; that he admitted service; and that he appeared specially to contest the Court's jurisdiction in personam. The Court, however, ruled adversely to him both on his motion to dismiss for lack of jurisdiction and again in passing upon Mrs Neal's motion for summary judgment which was granted July 21, 1972 approx a year after commencementof the action in the N.D. of California, judgment was entered on that same day.

On Sept 25,1972, over two months after the entry of summary judgment in Mrs Neal's favor, the plaintiff Tucker filed with the Clerk of the N.D. an "Application for extension of Time to File Notice of Appeal." Para (6) of that application concedes that the plaintiff failed to file a timely appeal of the order of summary judgment entered a against him. It states, "(as) a result of pre-occupation (sic)... Defendant (Tucker) missed getting a notice of appeal in within the time prosecribed (sick) by Rule 4 a FRAP" This application for an extension of time withint which to appeal the entry of summary judgment was denied on Oct 20, 1972.

On Nov3, 1972 notice was given that the plaintiff intened to appeal the order of Judge Zirpoli denying his request for an extension of time within which to appeal. An appeal was ultimately taken to the 9th C A

where it was dismissed March 27, 1973 for lack of appellate jurisdiction. The plaintiff Tucker than filed a petition for a writ of certiorari to the U. S. Sup. Ct. The writ however was denied Oct 9, 1973. See Tucker v Neal, US____, 94 S CT 49 (1973). In the meantime,, on Sept 5, 1972, Mrs Neal filed with the Clerk of the District for Conn. a certification of Judgment of $25,141.70 which she had obtained against Tucker in the N.D of California. Therefter the defendants recorded Mrs Neals judgment liens in the Connecticut land records of the Towns of Hartford, Bristol, and Torrington where the plaintiff owns property.

On April 10, 1973 the plaintiff brought this action seeking inter alia the nullification of those liens as well as monetary damages. Over the defendant's objections, this court permitted an amendment to the complaint allowing the plaintiff to add a "second cause of action" attacking on due process grounds the jurisdictional basis for the California judgment.

II

The legal issues before the court are far less complex than the plaintiff would make them. Ruel 56 c of the FRCP directs that summary judmgment

> "shall enter forthwith if the pleadings, depositions, answers to the interrogatories, and admissions on file, together with the affidavifs, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment"

The purpose of the rules in part is to protect both litigants and the court from frivolous claims and defenses, and to defeat attempts to use formal pleadings as a means to delay the recovery of just demands. Engl v Aetan Life Ins Co 139 F 2d 469, 472-473 (2 Cir 1943). Although the party moving for summary judgment must sustain the burden of showing the non-existence of factual issues which are both material and genuine, Boyce v Merchants Fire Insurance Co 204 F Supp 311, 313, (D-Conn 1964), it is clear that an unsupported contention that such an issue does in fact exist is insufficient to defeat summary judgment. Boyce v Merchants Fire Insurance Co, Supra. A Also see Waldron v British Petroleum Co, 38 FRD 170, 173 (SDNY 1965) aff'd 361 F 2d 671 (2 Cir 1966) aff'd sub nom. First National Bank of ARizona v Cities Service Co 391 US 253 (1968)

Not only has the plaintiff Tucker failed to set forth "specific facts or evidentiary data"..... (or) concrete particulars," showing there is an issue to be tried, Dressler v M. V Sandpiper, 331 F 2d 130, 133 (2 Cir 1964) he has also neglected to "adduce factual material which raises a substantial question of the veracity or completeness of the movant's showing or presents countervailing facts." Beal v Lindsay 468 F 2d 287, 291 (2 Cir 1972). Any dispute between the plaintiff and the defendants is purely one as to the law and is, therefore well-suited to summary disposition. See generally 6 J. Moore, Federal Practice, S 56.15 (1.02) at 2291-2297 (1972 ed).

III

Several arguments are advanced by the plaintiff in support of his present claims.. The first of these, a multi-pronged constitutional argument which is never fully or

clearly developed by the plaintiff, attempts to equate the recordation of a lien based on a judgment obtained in another forum with the type of property deprivations with which the Court was concerned in Snaidach v Family Finance Corp, 395 US 337 (1969); Lynch v Household Finance Corp, 405 US 538 (1972); and Fuentes v Shevin, 407 US 67 (1972). This equation fails for several reason.s

To the extent that plaintiff claims Snaidach Lynch, and Fuentes require a hearing before the recordation in one jurisdiction of a judgment lien arising from a constitutionallly valid judgment in another jurisdiction, he is plainly wrong. The Fuentes decision, like Snaidach and Goldberg v Kelly, 397 US 254 (1970) mark no radical departure from established principles of procedural due process.

> "Those decisions were in the mainstream of past cases, having little or nothing to do with the absolute "necessities" of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect. E. G. Opp Cotton Mills v Administration, 312 US at 152-153; US v Illinois Central 291 US at 463; Sourther R. Co v Virginia 290 US 190, Central of Georgia v Wright 207 US 127; Security Trust Co v Lexingotn, 203 US 323, Hibbin v Smith, 191 US 310, Glidden v Harrington, 189 US 255" Fuents v Shevin, 407 US at 88-89"

"Due process" is an elusive concept Its exact boundaries are undefinable, and its content varies according to the specific factual contexts" Hannah v Larche, 363 US 420, 442, (1960); Hill Const v Conn 366 F Sup

737 (D-Conn 1973). While its very nature is such as to preclude the universaal application of a single, inflexible procedure, id at 742, in a Fuentes-like context "due process is afforded..... by the kinds of "notice and hearring" that are aimed at establishing the validity, or at least the probable validity of the underlying claim against the alleged debtor before he can be deprived of his property..." Fuentes v Shevin, 407 US at 67.

In the present case, the uncontroverted affidavit of the Defendant Robert ANderson establishes, and this Court finds, that the plaintiff Tucker appeared and participated in the California trial which resulted in the underlying state court judgment in favor of Mrs Neal. That affidavit further represents and this court also finds, that the plaintiff was also given the opportunity for a hearing, and did in fact have a hearing, in the USDC for the ND of Calif in an action on the underlying state court judgment. Not only does the rationale of Fuentes and Snaidach not apply to the set of facts at hand, but it is difficult to conceive of how the plaintiff could have been afforded a more meaninglul opportunity to be heard. The plaintiff, in sum, not only had a adequate opportunity to be heard, but enjoyed a full scale trial in the state court and a subsequent hearing in USDC as well.

The plaintiff next argues that his constutional rights were violated by the liens in question being recorded prior to the time that the judgment upon which they were based became final. Until such time as the under lying judgment became final, the plaintiff maintains, the judgment was not registrable pursuant to 28 USC 1963, and the liens in

question could not, therefore, be recorded on the Connecticut land records. The chief difficulty with the plaintiff's argument is that it ignores the facts and disregards the law.

By its terms 28 USC 1963 permits the registration of only those judgments which have become "final", but recognizes that finality may result either "by appeal" or by expiration of the time for appeal". The foregoing phrase, which must be given its "ordinary, usual, and natural interpretation" Abegglen v Burnham, 94 F Supp 483, 486, (D Utah 1950) simply means that a judgment is not final, and hence not enforceable under 28 USC 1963 until a direct challenge to its validity is "disposed of" on appeal, or the time within which an appeal may be lodged has lapsed. Abegglen v Burnham, supra, Restatement, Conflict of Laws, comment at 519, (1934)

Here the uncontroverted facts indicate, and this Court accordingly finds, that neither the underlying state court judgment against the plaintiff Tucker nor the order of the USDC - ND of Calif, granting the defendant Jean Neal's motion for summary judgment on the underlying state court judgment were ever appealed. There is, therefore, simply no fasis in law or fact for plaintiff's contention that the judgment against him was registered in Conn before it became final within the meaning of 28 USC 1963. The only thing appealed by the plaintiff Tucker was the post-judgment order of Judge Zirpoli, denying the plaintiff an extension of time within which to file an appeal. Far from being an appeal of the original order entering judgment against him, the plaintiff's appeal

merely sought review of the Court's ruling on his Sept 25, 1972 "Application for an Extention of Time to File a Notice of Appeal". Para (6) of the applicati on concedes that the plaintiff failed to file a timely appeal from the order of summary judgment itself.

There is no merit to the plaintiff's argument that his appeal of Judge Zirpolis "Order Denying Application For extension of Time to File Notice of Appeal" deprived either the underlying state court judgment or the subsequent federal court judgment of finality. If an otherwise final judgment could be deprived of dfinality by the lodging of an appeal from a post-judgment order denying a litigant an extension of time within which to appeal that judgment , then there is no logical reason why the finality of a judgment should not also be made to await the out come of appellate review of other post-judgment orders. If this were the case the strong public policy favoring the termination of litigation throught the finality of judgments, see e g Baldwin v Iowa State Traveling Men's Asso 283 US 522, 524-526 (1931) would be far too easily frustratted by the simple filing of a post-judgment motion. Logically, a judgment could never truly be fi al as long as the possibility existed that a post judgment motion might be filed, since the appeal from any ruling on such a motion would be deemed to have enmeshed the underlying judgment itself in an appeal, thereby depriving it of finality. The law wisely rejects the plaintiff's hypothesis.

The plaintiff's application for an extension of time within which to appeal the entry of summary judgment against

him was filed well after the time for the filing of a notice for the appeal had expired. Para (6) of the"Application" itself admits that timely notice of appeal was not given. Plaintiff's request for an extension of time, therefore, enjoys no greater status and stands on no stronger footing than does, for example, a motion to vacate the judgment or a motion for a new trial. It is settled beyond peradventure that such motions do not destroy the finality of an underlying money judgment. Stovall v Banks 77 US 583. Loever v Schroeder 149 US 580, 585. See also Restetement, Judgments S 41, comment d at 163-164 (1942).

The second count of the complaint launches a collateral attack on the jurisdictional basis for the California judgment. Thomspon v Whitman 85 US 458 (1873). The plaintiff argues that the judgment of the USDC for the Nd of Calif is void since the Court lacked jurisdiction over his person. The defendants doe not dispute the general proposition that "proceedings in a court..... to determine the personal rights and obligations of parties over whom the court does not have jurisdiction, do not constitute due process of law." Pennoyer v Neff, 95 US 714, 733 (1878). Rather, the defendants argue that plaintiff's contacts with the State of California were more than adequate to establish in personal jurisdiction and that, in any event, principles of res judicata preclude a collateral attack on the jurisdictional basis for the judgment.

Taking the defendants second argument first, this Court finds that res judicata does preclude collateral attack on the California judgment, and that the plaintiff's position is in reality no different than that of the respondent Association in Baldwin v Iowa State 283 US 522 (1931)

In that case the Court held that the respondent, an Iowa corporation which had insuccessfully challenged the in personam jurisdiction of a Missouri court and there after permitted its judgment to become final, was precluded from later collaterally attacking the jurisdictional basis of that judgment. In addressing itself to the respondents claims , the Court said"

> "The respondent.. insists that to deprive it of the defense which it made in the court below, of lack of jurisdiction over it by the Missouri District Court, would be to deny the due process guaranteed by the 14th Amend. but there is involved in that doctrine no right to litigate the same question twice....."

See also Durbee v Duke 375 US 106; Trenies v Sunshine Mining Co 308 US 66; Southard v Sourthard 305 F 2d 730. Restatement, Judgments S 5 comment j, at 35 (1942).

The uncontroverted facts indicate that the plaint iff appeared specially before the Calif federal court, that he contested that courts jurisdiction over his person by filing a motion to dismiss for lack of in personam jurisdiction, that the proceedings were determined adversely to him, with an order for summary judgment being entered agains t him on July 21, 1972, and that by reason of the plaintiff's failure to appeal, it became a final judgment. On these facts, the Court concludes as a matter of law that the plaintiff, Stanley TUcker, is precluded from collaterally attacking either the judgme net or the jurisdictional basis for the judgment of the USDC for the ND of Califonria.

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There is absolutely no merit to the plaintiff's contention that the District Court never determined or otherwise passed upon his jurisdictional challenge. The Court's entry of summary judgment against the plaintiff was a tacit rejection of his jurisdictional challenge and a finding, albeit implicity, of "all the facts necessary to sustain the jdugment" Fayerwather v Ritch, 195 US 276, 302. Cf Napa Valley Electric Co v Railraod Com. 251 US 366 , 372-373 (1919). No explicity finding of in personam jurisdiction and certainly no memorandum of decision rejecting the plaintiff's jurisdictional claims, is necessary. See Yates v US 354 US 298, 336. Nelson v Swing-Away Mfg Co 266 F 2d 184 (8 Cir 1959)

Although non-essential to its determination that the judgment of the USDC - ND Calif is valid in all respects, see Chicago Life v Cherry 244 US 25, this Court also finds that the plaintiff's contacts with the State of California were more than sufficient to satisfy "traiditonal notions of fair play andsubstantial justice" Internal Shoe v State of Washington , 326 US 310. The uncontroverted affidavit of the defendant Robert Anderson details the plaintiff's activities in California. At the very least that affidavit paints the portrait of a person who has on a minimum of 36 occasions purposely availed himself of fhe privilege of conducting activities within the forum state. Hanson v Denckla 355 US 220.

Surely the plaintiff's maintenance of over 36 pro se law suits within California is no less a significant contact with that forum than is the defendants simple

allegedly tortious recordation of their judgment liens in Connecticut, the plaintiff's authority to the contrary is in apposite.

The Court has considered the remainder of the plaintiff's arguments and finds them to be without merit and underserving of further comment.

The plaintiff Stanley Tucker's motion for summary judgment is denied. The defendant's motion for summary judgment is granted. An order may enter giving judgment to the defendant Jean Neal in the amount of $25,141,70 plus interest and taxable costs; the defendants are entitled to a judgment of foreclosure, supplemental proceedings will be held to determine which of the plaintiff's parcels of property will be sold to satisfy the defendant Jean Neal's judmment.

SO ORDERED

Dated at Hartford, Conn this 5th day of March 1974.

T. Emmet Clarie
United States District Judge.